

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CRIMINAL DOCKET NO.: 3:01CR178**

**UNITED STATES OF AMERICA**

**vs.**

**JAMES EDWARD BYRD, III,**

**Defendant.**

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**ORDER**

**THIS MATTER** is before the Court on its own Motion. On November 7, 2003, a jury found Defendant guilty of conspiracy to possess with intent to distribute a quantity of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 846. On October 26, 2004, this Court sentenced Defendant to 360 months imprisonment. Judgment was entered on December 16, 2004. Defendant filed a Notice of Appeal on October 26, 2004. On September 19, 2005, the United States Court of Appeals for the Fourth Circuit affirmed Defendant's conviction but vacated Defendant's sentence and remanded Defendant for re-sentencing pursuant to *United States v. Booker*, 125 S. Ct. 738 (2005). In reaching its decision regarding Defendant's sentence, the Fourth Circuit found that this Court erroneously sentenced Defendant under the mandatory federal sentencing guidelines and enhanced his sentence based upon facts found by a preponderance of the evidence. Specifically, this Court established a base level offense of thirty-six based upon a finding that Defendant was responsible for 874 grams of cocaine base, and further increased Defendant's base offense level by two levels under U.S.S.G. § 3A1.2(a). The Fourth Circuit concluded this means of sentencing Defendant violated the Sixth Amendment. The Mandate issued on October 11, 2005. On September 13, 2006, Defendant filed a Sentencing Memorandum.

Defendant is currently scheduled for re-sentencing on October 26, 2006. However, in order for the Court to properly prepare for this re-sentencing, the Court requests that the Government file a Response to Defendant's Sentencing Memorandum and further address any other sentencing issues raised by the Fourth Circuit's September 19, 2005 opinion.

**IT IS, THEREFORE, ORDERED** that the Government has ten (10) days from the date of this Order to file a Response to Defendant's Sentencing Memorandum and to the Fourth Circuit's September 19, 2005 opinion remanding this matter for re-sentencing.

Signed: October 3, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees  
United States District Judge

